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State, it may be done by a master from every

WASHINGTON, D. C.

OPINION OF JUDGE MCLEAN.

DRED SCOTT vs. J. F. H. SANDFORD. This case is before us on a writ of error from the Circuit Court for the district of Missouri. An action of trespass was brought, which

charges the defendant with an assault and im-prisonment of the plaintiff, and also of Harriet Scott, his wife, Eliza and Lizzie, his two children, on the ground that they were his slaves, which was without right on his part, and against law.

The defendant filed a plea in abatement,
"that said causes of action, and each and every
of them, if any such accrued to the said Dred Scott, accrued out of the jurisdiction of this court,

and exclusively within the jurisdiction of the courts of the State of Missouri, for that to wit, said plaintiff. Dred Scott, is not a citizen of the State of Missouri, as alleged in his declara-tion, because he is a negro of African descent, his ancestors were of pure African blood, and

To this a demurrer was filed, which, on ar Eliza and Lizzie, the daughters of the plain-tiff, were the lawful slaves of the defendant. Issue was joined on the first plea, and repli-cations of de injuria were filed to the other

In the year 1834 the plaintiff was a negro slave belonging to Dr. Emerson, who was a surgeon in the army of the United States. In that year, Dr. Emerson took the plaintiff from the State of Missouri to the post of Rock Island, in the

State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned, Dr. Emerson removed the plaintiff from Rock Island to the military post at Fort Snelling, situate on the west bank the Mississippi river, in the territory known as Upper Louisiana, acquired by the United States of France, and situate north of latitude 36° 30' north, and north of the State of Missouri. Dr. Emerson held the plaintiff in slavery, at Fort Snelling, from the last-mentioned date until the year 1838. In the year 1835, Harriet, who is named in

the second count of the plaintiff's declaration, was the negro slave of Major Taliaferro, who belonged to the army of the United States. In that year, Major Taliaferro took Harriet to Fort Snelling, a military post situated as hereinbe-fore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave, at Fort Snelling, unto Dr. Emerson, who held her in slavery, at that place, until the

the State of Missouri, and upon the river Mis-

In the year 1838, Dr. Emerson removed the riet, Eliza, and Lizzie, to the defendant, as

laration the defendant, claiming to be the own-

er, laid his hands upon said plaintiff, Harriet, in this respect, however, no more than he might

murrer to the plea was sustained, which ruled the piez bad, and the defendant, on leave,

decision on the demurrer. The defendant might have complained of this decision, as against him, and have prosecuted a writ of error, to reverse it. But as the case, under the instruction of the court to the jury, was deci
1. As to the locality of Slavery, The civil

the argument as authority, and not a single dor, lib. 1, p. 418; 4 Martin, 385; Case of the case precisely in point is recollected in our re-The pleadings do not show a want of more on International Law, 316, 335.) clear as not to admit of doubt. Now, the plea which raises the question of jurisdiction, in my judgment, is radically defective. The gravamen of the plea is this: "That the plaintiff is a negro of African descent, his ancestors being of pure African bigod, and were brought into the State of Pennsylvania, (16 Peters, 594; 14 Curtis, 421,) this court say that, by the general that period, in a traffic which is now declared that price of the please o clear as not to admit of doubt. Now, the plea s Florida plantation, and were received on which raises the question of jurisdiction, in my board of ship by Admiral Cohrane; by the strument so the not to convey the idea that

any other State, nor that he is not a free man jects of other nations where "avery is organ-in Missouri. He is averred to have had a neero ancestry, but this does not show that he is and not as a matter of interna ional right. The for the colore race, yet many of them were the means of self-government, may state of Missouri, within the meaning state of Slavery is deemed to be a mere municitizens of the New England States, and exerin the Circuit Court. It has never been held the range of the territorial laws. This was not doubted by recognised in Comerce in Comerce in Case, (Laff's any intelligent person that its tendencies would have the qualifications of an elector. Females and minors may sue in the was decided before the American Revolution.

both under our constitution and may, the laws under which it is salutioned.

No case in England apper a so keye been both, to make him a citizen. The most general and appropriate definition of the term citizen is "a freeman." Being a freeman, and having his domicil in a State different from King's Bench. The cause w sargued at great and the state of the court of the that of the defendant, he is a citizen within

Union are open to him.

It has often been held, that the jurisdiction, as regards parties, can only be exercised becitizens of different States, and that a dence is not sufficient; but this has

The state of Slavery is of ach a nature that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which enable an individual to sue in the Federal reasons, occasion, and time itself, from whence courts. This has not been done; and on this it was created, is erased fror the memory; i ground the plea was defective, and the demuris of a nature that nothing c n be suffered to

The pleader has not the boldnes to allege that the plaintiff is a slave, as that ould assume against him the matter in corroversy, and embrace the entire merits of the ase in a case. It is a sufficient answer to all objections

rule of pleading.

The defendant's counsel complain, 'nat if the court take jurisdiction on the ground that the plaintiff is free, the assumption is against the right of the master. This argument is easily cion, can be exercised over him." Under an ule of pleading.

The defendant's counsel complain, 'jat if the answered. In the first place, the plea does not show him to be a slave; it does not follow that the opinion in the case of Grace. show him to be a slave; it does not follow a man is not free whose ancestors were slaves.

The reports of the Supreme Court of Missouri except under the authority of law, it is objected, that in few if in any instances has it been except under the authority of law, it is objected, that in few if in any instances has it been except under the authority of law, it is objected, that in few if in any instances has it been except under the authority of law, it is objected, that in few if in any instances has it been except under the authority of law, it is objected, that in few if in any instances has it been except under the authority of law, it is objected. and there is no averment in the plea that the

No injustice can result to the master, from gument, was sustained by the court, the plea in abatement being held insufficient; the defendant was ruled to plead over. Under this rule he pleaded—1. Not guilty; 2. That Dred to assert his claims to freedom before this tri-Scott was a negro slave, the property of the defendant; and 3. That Harriet, the wife, and on the ground that he is a slave, it is decisive of bunal. If the jurisdiction be ruled against him,

It has been argued that, if a colored person be made a citizen of a State, he cannot sue in the Federal Court. The Constitution declares that Federal jurisdiction " may be exercised between citizens of different States," and the same is provided in the act of 1789. The above argument is properly met by saying that the Constitution was intended to be a practical instrument; and where its language is too plain to e misunderstood, the argument ends. In Chiræ vs. Chiræ, (2 Wheat., 261; 4 Cur-

tis, 99,) this court says: "That the power of naturalization is exclusively in Congress does not seem to be, and certainly ought not to be, ontroverted." No person can legally be made a citizen of a State, and consequently a citizen of the United States, of foreign birth, unless he be naturalized under the acts of Congress. Congress has power "to establish a uniform rule of naturalization."

It is a power which belongs exclusively

Congress, as intimately connected with our Federal relations. A State may authorize foreigners to hold real estate within its jurisdiction, but t has no power to naturalize foreigners, and give them the rights of citizens. Such a right is opposed to the acts of Congress on the sub-ject of naturalization, and subversive of the Federal powers. I regret that any countenance should be given from this bench to a practice like this in some of the States, which has no warrant in the Constitution.

iana and Florida. No one ever doubted, and no tories did not become citizens under the treaty. They have exercised all the rights of citizens,

There are several important principles volved in this case, which have been argued, dayes, and he has ever since claimed to hold and which may be considered under the follow

1. The locality of Slavery, as settled by this court and the courts of the States.

2. The relation which the Federal Govern ant bears to Slavery in the States.

torial Governments, and to prohibit the intro-duction of Slavery therein.

4. The effect of taking slaves into a new

State or Territory, and so holding them, where 5. Whether the return of a slave under the

freedom, reduces him to his former condition. 6. Are the decisions of the Supreme Court of Missouri, on the questions before us, binding In the course of my judicial duties, I have had occasion to consider and decide several of

can exist only within the territory where it is record, shall clearly perceive that the Circuit Court had no jurisdiction, it is a ground for the dismissal of the case. This may be charactering the carried beyond such territory, his master cannot reclaim him, unless by virtue of some ex-

There is no nation in Europe which considtourrer to the special plea. No such case, it slave, under the civil law or the law of nations. is believed, can be cited. But if this rule of On the contrary, the slave is held to be free practice is to be applied in this case, and the plaintiff in error is required to answer and in some other form, to return him to his master. as to show the error of those ruled against him, he has more than an ordinary duty to perform. Under such circumstances, the want of jurisdiction in the Circuit Court must be so

shows or conduces to show an inability in the plaintiff to sue in the Circuit Court. It does not allege that the plaintiff has been described by the state of Slavery, as found within its territorial dominions. There is no averment in this plea which shows or conduces to show an inality in the plaintiff to sue in the Circuit Court. It does not allege that the plaintiff had his dominions, where it is in opposition to its now other States, nor that he is not a free man in Missouri. He is averred to have had a nember of missouri. He is averred to have had a nember of missouri. He is averred to have had a nember of missouri. The court say that, by the general that period, in a traffic which is now declared to be piracy, and punished with death by conducts to make all needful rules and regulations respecting the territory or other proportion to its own policy and institutions, in favor of the subjects of other nations where are avery is organized. If it does it, it is as a latter of comity,

elector. Females and minors may sue in the was decided before the Ameri an Revolution. Federal courts, and so may any individual who has a permanent domicil in the State under the judges on certain points uled in Prigg's

> length, and with great shility by Hargrave and others, who stood among to most eminent counsel in England. It was eld under advise ment from term to term, and . due sense of its importance was felt and expre sed by the Bench. In giving the opinion of the court, Lord Mansfield said:

"The state of Slavery is of ach a nature tha

plea to the jurisdiction. But beyon the facts set out in the plea, the court, to sust it, must the Revolution, and that it was considered by assume the plaintiff to be a slave, witch is decisive on the merits. This is a show and an effectual mode of deciding the caused but I am yet to learn that it is sanctioned by we known rule of pleading.

This is a show and an a century, the decision in Somerset's case has remained the law of England. The case of the slave Grace, decided by Lord Stowell in 1827, does not, as has been supposed, overrule the

other head, I shall have occasion to examine

established by statutory enactment. This is no answer to the doctrine laid down by the plaintiff is not within them.

By all the rules of pleading, this is a fatal defect in the plea. If there be doubt, what rule of construction has been established in the very was introduced into the colonies of this the State of Missouri, as a negro of African descent, his ancestors were of pure African blood, and were brought into this country, and sold as negro slaves; and this the said Sandford is ready to verify; wherefore he prays judgment whether the court can or will take further cognizance the court can or will take further cognizance important right of freedom."

rule of construction has been established in the slave States? In Jacob 28. Sharp, (Meigs's Rep., Tenneseee, 114,) the court held, when there was doubt as to the construction of a will which emancipated a slave, "it must be constructed to be subordinate to the higher and more important right of freedom." is no slave State where the institution is not

recognised and protected by statutory enact-ments and judicial decisions. Slaves are made property by the laws of the slave States, and as such are liable to the claims of creditors; they descend to heirs, are taxed, and in the South they are a subject of commerce. In the case of Rankin vs. Lydia, (2 A. K. Marshall's Rep.,) Judge Mills, speaking for the Court of Appeals of Kentucky, says: "In deciding the question, (of Slavery,) we disclaim the influence of the general principles of liberty, which we all admire, and conceive it ought

be decided by the law as it is, and not as it ought to be. Slavery is sanctioned by the laws of this State, and the right to hold slaves under our municipal regulations is unquestionable. But we view this as a fight existing by positive law of a municipal character, without foundation in the law of nature, or the unwritten and commo

I will now consider the relation which the Federal Government bears to Slavery in the States:

Slavery is emphatically a State institution In the 9th section of the 1st article of the Constitution, it is provided "that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding \$10 for ach person."

In the Convection, it was proposed by a com

mittee of eleven to limit the importation of slaves to the year 1800, when Mr. Pinckney, moved to extend the time to the year 1808. This motion was carried, New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, and Georgia, voting In the argument, it was said that a colored in the affirmative; and New Jersey, Pennsylvait in the Constitution." (Madizon Papers) The provision in regard to the slave tradshows clearly that Congress considered Slavery that interest, the slave trade was continued twenty years, not as a general measure, but for the "benefit of such States as shall think proper to encourage it."

In the case of Groves vs. Slaughter, (15 Peters, 449; 14 Curtis, 137,) Messrs. Clay and Webster conteaded that, under the commercial power, Congress had a right to regulate the terfere with S'avery as it exists in the States, or to regulate what is called the slave trade among them. If this trade were subject to the gress could abolish or establish Slavery in

every State of the Union.

The only connection which the Federal Government bo'ds with slaves in a State, arises from that provision of the Constitution which labor in one Sitte, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, of claim of the party to whom such service of labor may be due."

Government, it rests mainly for its execution, as has been he ld, on the judicial power of the Union; and so ar as the rendition of fugitives law throughout the Continent of Europe, it is from labor has become a subject of judicial ac-believed, without an exception, is, that Slavery

discharged. In the formation of the Federal Constitu tion, care was taken to confer no power on the Federal Gover ment to interfere with this indor, lib. 1, p. 418; 4 Martin, 385; Case of the representation, and providing for the reclama-Creole in the House of Lords, 1842; 1 Philliphic of fugitive from labor, slaves were refer-

> cial colonies a id States were chiefly engaged that James Ma ison, that great and good man, a leading men ber in the Federal Convention,

state of Slavery is deemed to be a mere muni-cipal regulation, founded upon and limited to the range of the territorial faws. This was

Many of the States, on the adoption of the There was some contrariety fopinion among the judges on certain points uled in Prigg's case, but there was none in related to the great principle, that Slavery is limit d to the range of the laws under which it is sabstioned.

No case in England apper 1 16 have been would gradually decline, until it would become the power is derived, the possession of it is haquestoured took measures to abolist slavery within their respective power is derived, the possession of it is haquestoured to the power is derived, the possession of it is haquestoured. And in the close of the opinion the court say, "in legislating for them, [the Territories, Congress exercises the combined powers of the General and State Governments."

No case in England apper 1 16 have been would gradually decline, until it would become

> ages of the words, why confine our view to colored slavery? (h the same principles, white men match the thought?)
>
> ages of the words so completely were made also es. All slavery to the dark of the Chief Justice, observed, "no one can mistake the style, the words so completely were made also es. All slavery to the dark of the thought." in power, and s against right.
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> The power & Congress to establish Territorial Governments, and to prohibit the introduction giving power to Congress to govern the Terriof Slavery the bin, is the next point to be contories, and two other grounds from which the

which a right judgment depends. The in latit-ants at those places claim protection a sinst ants at those places claim protection for both

The word "territory," according to Worces civil and criminal justice."

In May, 1787, Mr. Edmund Randolph submitted to the Federal Convention certain propositions, as the basis of a Federal Government,

among which was the following:

"Resolved, That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether territory or otherwise, with the consent of a fer the purpose of government.

But, if it be admitted that the word territory

Afterward Mr. Madison submitted to Afterward Mr. Madison submitted to the Convention, in order to be referred to the Committee of Detail, the following powers, as proper to be added to those of general legisla-

"To dispose of the unappropriated lands of the United States. To institute temporary Governments for new States arising therein. To regulate affairs with the Indians, as well within as without the limits of the United States."

Other propositions were made in reference to

pose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothng in this Constitution contained shall be so the United States or of any particular State." substituted for Legislature, and the word either was stricken out.

In the organization of the new Government, but little revenue for a series of years was ex-pected from commerce. The public lands were considered as the principal resource of the country for the payment of the Revolutionary debt. Direct taxation was the means relied on to pay the current expenses of the Government. The short period that occurred between the cession of Western lands to the Federal Government by Virginia and other States, and the adoption of the Constitution, was sufficient to show the necessity of a proper land system and a temporary Government. This was clearly seen by propositions and remarks in the Federseen by propositions and remarks in the Feder-al Convention, some of which are above cited, by the passage of the Ordinance of 1787, and

It will be recollected that the deed of ce Western territory was made to the United States by Virginia in 1784, and that it required In the argument, it was said that a colored in the argument, it was the final the argument in 1784, and that it required the territory ceded to be laid out into States, in the territory ceded to be laid out into States, the territory ceded to be laid out into States, the territory ceded to be mon benefit of the States, and that all right, ti- of the end. This is the limitation of all the

was passed," for the government of the United with but one dissenting vote. This instrument provided there should be organized in the Territory not less than three nor more than five ed persons injurious to the population of a free States, designating their boundaries. It was passed while the Federal Convention was in sec.

of the Federal Convention could have overlookcommercial power, it would follow that Con- ed or neglected a matter so vitally important to vision for the admission of new States, the sale declares that "No person held to service or of the public lands, and the temporary Govern- ing States, by bringing slaves into free terri-

adequate legislative power given in it. The in a slave Territory, where one slaveholder power to make all needful rules and regula- would be prevented from settling in a free Tertions is a power to legislate. This no one will controvert, as Congress cannot make "rules and regulations," except by legislation. But it is argued that the word territory is used as free Territories is inconsistent with the continuto the disposition of lands and other property has uniformly remained in that condition stitution in the States. In the provision respecting the silve trade, in fixing the ratio of representation, and providing for the reclamation of fugitive from labor, slaves were referred to as perse is, and in no other respect are they considered in the Constitution.

We need not refer to the mercenary spirit which introduced the infamous traffic in slaves, to show the deptadation of negro Slavery in our country. This system was imposed upon our colonial settlet ents by the mother country, and it is due to the true construction of the section in the fact that in the first line of the section "the power to dispose of the public lands" is given expressly, and, in addition, to make all needful rules and regulations. The power to dispose of is complete in itself, and to quires to show the deptadation of negro Slavery in our colonial settlet ents by the mother country, and it is due to the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the commer-colonial settlet ents by the mother country, and it is due to truth to say that the construction of the section in the first line of the section in the fact that in the first line of the section in the section in the section in the section in the fact that in the first line of the section in the fact that in the first line of

mean time, Florida continues to be a Lerritory of the United States, governed by virtue of that

the culture of sotton and sugar, prevented the realization of his expectation. Like all other communities; had States, the South were influenced by what the considered to be their own casion to cite a few sentences from an opinion

match the thought."

I can see no want of precisjon in the language of the Chief Justice; his meaning cannot be mistaken. He states, first, the third section as tories, and two other grounds from which the power may also be implied. The objection seems to be, that the Chief Justice, did not say

by our ignorance of the many circumstances on whose decree was brought before this court for which a right judgment depends. The in salat-

ter, "means land, country, a district of country under a temporary Government." The words "territory or other property," as used, do imply, from the use of the pronoun other, that among which was the following:

"Resolved, That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory or otherwise, with the consent of a land, for the purpose of sale—as territory, for the purpose of government.

as used means land, and nothing but land, the sower of Congress to organize a temporary Government is clear. It has power to make all regulations respecting the public lands, and the extent of those "needful regulations" depends upon the direction of Congress, where the means are appropriate to the end, and do not conflict with any of the prohibitions of the Constitution. If a temporary Government be deemed needful, necessary, requisite, or is wanted, Congress has power to establish it. This court says, in McCulloch vs. the State of Other propositions were made in reference to the same subjects, which it would be tedious to enumerate. Mr. Gouverneur Morris proposed the following:

"The Legislature shall have power to dis-Maryland, (4 Wheat., 316,) "If a certain means necessity is a question of legislative discretion,

not of judicial cognizance." The power to establish post offices and post roads gives power to Congress to make conenstrued as to prejudice any claims either of tracts for the transportation of the mail, and to which suspends commerce; so, under the same power, harbors, lighthouses, breakwaters, &c.,

Did Chief Justice Marshall, in saying that Congress governed a Territory, by exercising the combined powers of the Federal and State Governments, refer to unlimited discretion? A Government which can make white men slaves? Surely, such a remark in the argument must have been inadvertently uttered. On the contrary, there is no power in the Constitution by which Congress can make either white or black the adoption of that instrument by Congress, are contrary to its spirit; so that, whether the under the Constitution, which gave to it validand property of purchasers of the public lands, or of communities who have been annexed to the Union by conquest or purchase, they are initiatory to the establishment of State Governments, and no more power can be claimed or exercised than is necessary to the attainment

> But Congress has no power to re consequently, in providing for the government are necessarily exercised.

sion, about two months before the Constitution | nected with the public interest, they have the was adopted by the Convention. The members of the Convention must therefore have been in it. This can be sustained on the ground of well acquainted with the provisions of the Ordinance. It provided for a temporary Governshown in our history by practical results, ment, as initiatory to the formation of State that it would seem no considerate individ-Governments. Slavery was prohibited in the ual can question it. And, as regards any unfairness of such a policy to our Southern brethren, as urged in the argument, it is only necessary to say that, with one-fourth of the Federal population of the Union, they have in the country, in the organization of temporary the slave States a larger extent of fertile terriarticle of the Constitution, they did make pro- from bringing them into free territory, that the restriction on the free citizens of non-slaveholdment of the territory. Without a temporary tory, is four times greater than that complained Government, new States could not have been of by the South. But, not only so; some three formed, nor could the public lands have been or four hundred thousand holders of slaves, by bringing them into free territory, impose a re-striction on twenty millions of the free States. stated, I could not hesitate to say there was prevent fifty or a hundred freemen from settling

synonymous with the word land; and hat the since of the Union. Where a Territorial Govrules and regulations of Congress are limited erament is established in a slave Territory, it belonging to the United States. Tha this is the people form a State Constitution; the same

In the discussion of the power of Con ress to govern a Territory, in the case of the Atli atic Insurance Company vs. Canter, (1 Peters 511; Y Curtis, 685,) Chief Justice Marshall, a caking for the court, said, in regard to the prople of that such a jurisdiction was rightfully exercised. for the court, said, in regard to the p ople of Florida, "they do not, however partic pate in political power; they do not share in the lovernconquer a country, may not Congress provide for the government of such country? This would be an implied power essential to the ac-

> exercised, without doubt or its constitutionality, over territory acquired by conquest and pur-And when there is a large district of country State Government, if it be necessary to estabpower expressly vested in Congress—as the disposition of the public lands—may not such do we read the Constitution? Is it not a prac-

> tical instrument? In such cases, no implication of a power can arise which is inhibited by the Constitution, or which may be against the theory of its construc-tion. As my opinion rests on the third section, these remarks are made as an intimation that the power to establish a temporary Government may arise, also, on the other two grounds stated in the opinion of the court in the insurance case, without weakening the third section.

An expansion or contraction of our territory

required no change in the fundamental law. When we consider the men who laid the foundation of our Government and carried it into operation, the men who occupied the bench, who filled the halls of legislation and the Chief Magistracy, it would seem, if any question could be settled clear of all doubt, it was the power of Congress to establish Territorial Governments. Slavery was prohibited in the entire

complain of the land jobbers, &c., who are purchasing titles among them. Those of St. Vincent's complain of the defective crimina; and civil justice among them, as well as of mijtary protection." And on the next day he wries to Mr. Jefferson: "The opinion clearly was not obiter dicta. The opinion clearly was not obiter dicta. The turning point in the case was, whether the turning point in the case was, whether the turning point in the case was, whether the turning point to pass the law under the authority of law, founded on usage that Congress, in the act to establish a Government in the Mississippi Territory, prohibited the importation of slaves into it from foreign points; but it is equally true, that in the act parts; but it is equally true, that in the act parts; but it is equally true, that in the act parts; but it is equally true, that in the act parts; but it is equally true, that in the act parts; but it is equally true, that in the act printing in the clause requiring the rendition of fugitives from labor, every non-slave intended as a true of the Union would have been at liberty to have declared free all runs and the Union would have been at liberty to have declared free all runs and the Ordinance of 1787 was intended as a fundamental law for those who may choose to bring into Orleans Territory, from any port or place within the limits of the Union and powers of Congress are explication. And the court in the action the authority of law, founded on usage that the organized in the next of law of the work of law of the authority of law, founded on usage that the organized. The turning point in the case was, whether the intended on the extra truther says, "It is man-ifest, from this consideration, that if the Constitution and powers of Congress are explication. And the court further says, "It is man-ifest, from this consideration, that if the Constitution and the clause received in the next of law of the court further says, "It is man-ifest, from this consideration, that if the Constitution of slaves into person to bring into Orleans Territory, from been at liberty to have declared free all runary port or place within the limits of the United States, any slave which shall have been imbave given them entire immunity and protection.

That any sort of residence contrived or personal statute. ported since 1798, or which may hereafter be tion against the claims of their masters." States who settles in the Territory, under the penalty of the freedom of such slave." The inference of Mr. Madison, therefore, against inference of Mr. Madison, therefore, against such slave cannot be said to have left the slave to freedom.

In Julia vs. McKinney, (3 Missouri Rep., 1 Julia vs. McKinney, 1 Missouri Rep., 2 Missouri Rep., 2 Missouri Rep., 2 Missouri Rep., 3 Missouri Rep., 3 Missouri Rep., 3 Missouri Rep., 3 Missouri Rep., 4 Misso founded on a fact supposed, which did not legalized. And if Slavery be limited to the 279,) it was held, where a slave was settled in range of the territorial laws, how can the the State of Illinois, but with an intention on the

It is refreshing to turn to the early incidents slave be coerced to serve in a State or Territo- part of the owner to be removed at some fu of the great men who have gone to their acoke, as chairman of a committee, in March, 1803—fifty-four years ago. From the Convention held at Vincennes, in Indiana, by their President, and from the people of the Territory, a petition was presented to Congress, praying the suspension of the provision which prohibited be levied on as the property of his master by a that she had been bought as a slave in Mis Slavery in that Territory. The report stated "that the rapid population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employ ed to advantage in the cultivation of products more valuable than any known to that quarter f the United States; that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the her slave domicil, her former status attached. happiness and prosperity of the Northwestern | The law of England did not prohibit Slavery, country, and to give strength and security to but did not authorize it. The jurisdiction that extensive frontier. In the salutary opera- which prohibits Slavery is much stronger in Rachel under Stockton." punish all who commit depredations upon it in its transit, or at its places of distribution. Con- it is believed that the inhabitants will, at no does not authorize it. This was adopted a part of the Constitu-tion, with two verbal alterations—Congress was gress has power to regulate commerce, and, in very distant day, find ample remuneration for

Governments. No court, State or Federal, no own? To this I answer, that colored persons judge or statesman, is known to have had are made property by the law of the State, and any doubts on this question for nearly sixty no such power has been given to Congress. years after the power was exercised. Such Does the master carry with him the law of the slave into free territory, the court said no au-Governments have been established from the State from which he removes into the Territo- thority of law or the Government compel sources of the Ohio to the Gulf of Mexico, ex-tending to the Lakes on the north and the Pa-slave in the Territory? Let us test this theory.

"Shall it be said, that because an officer of the army owns slaves in Virginia, that when, as

which has occurred in the judicial history of been very recent, and it is unknown to the laws non-slaveholding States. Texas, under a of any civilized country. previous organization, was admitted as a State; A slave is brought to Eagland from one of of government. Without temporary Govern. there is no law prohibiting Slavery in England, ments, our public lands could not have been yet there is no law authorizing it; and, for near and the population protected; nor could our slave there is free from the coercion of the the defendant was a sejourner in Illinois. This

formed.

What do the lessons of wisdom and experience thority.

There is no other description of property which was not protected in England, brought the way and the control of the contr burst upon us be true? Acquiescence; acquiescence under a settled construction of the Con. show that property in a human being does not hearing, sold the plaintiff to stitution for sixty years, though it may be erro-neous; which has secured to the country an in the language of this court, "it is a mere of computation.

forcibly illustrates this policy. He had made of the law, in regard to the extent of Slavery. up his opinion that Congress had no power under the Constitution to establish a National for argument; it is obligatory on myself and of the river Ohio? In the 3d section of the 4th is submitted, if masters of slaves be restricted Bank. In 1815, Congress passed a bill to establish a bank. He vetoed the bill, on objecwhich this court exercises an appellate power. tions other than constitutional. In his message, he speaks as a wise statesman and Chief Magerty of the States, and that every man has a

"Waiving the question of the constitutional authority of the Legislature to establish an incorporated bank, as being precluded, in my which makes him such. Never was a truth judgment, by the repeated recognitions under more authoritatively and justly uttered by man.

Suppose a master of a sleep in a British intend. institution, in acts of the Legislative, Executive, owned a million or property in England; would and Judicial branches of the Government, act that authorize him to take his slaves with him companied by indications, in different modes, to England? The Constitution, in express of a concurrence of the general will of the terms, recognises the status of Slavery as found-

service or labor in one State, under the laws dom become lost to the present generation?

If the great and fundamental principles of thereof, escaping into another, shall," &c. Now, If the great and fundamental principles of unless the fugitive escape from a place where, our Government are never to be settled, there by the municipal law, he is held to labor, this can be no lasting prosperity. The Constitution will become a floating waif on the billows of can be more conclusive than this? Suppose a

ied in the Missouri Compromise, could not be exercisad in 1840. But this law of Congress, which prohibits Slavery north of Missouri and of 36° 30' is de-

clared to have been null and void by my breth-

ren. And this opinion is founded mainly, as I understand, on the distinction drawn between the Ordinance of 1787 and the Missouri Compromise line. In what does the distinction consist? The Ordinance, it is said, was a compact entered into by the Confederated States before the adoption of the Constitution; and that in the cession of territory authority was given to establish a Territorial Government. operation by virtue of the authority of the Confederation, but by reason of its modification and adoption by Congress under the Constitution. a different footing from territories subsequently tended for the government of the Northwestern Territory, and was limited to such Territory, is admitted. It was extended to Southern Territory, and liberties, of the French settlers, should be guarantied to them. This, it has been contended to such Territory, and liberties and liberties, of the French settlers, should be guarantied to them. This, it has been contended second them in the possession of those

no force. It rested for its validity on the act vention had power to deprive them of it; or, of Congress, the same, in my opinion, as the ernment in the exercise of its discretion, it is a clear principle that a court cannot control that discretion. This being the case, I do not see on what ground the act is held to be void. It did not purport to forfeit property, or take it for public purposes. It only prohibited Slavery; in doing which, it followed the Ordinance of 1787.

Ordinance was made valid by the act of Congress, and without such act could have been of

I will now consider the fourth head, which is, "The effect of taking slaves into a State or Territory, and so holding them, where Slavery 473,) at October term, 1824. It appeared

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nitted by the legal owner of the slave, upon imported, except by a citizen of the United States who settles in the Territory, under the ed; but if he accompany his master into a to defeat or evade the Ordinance, and thereby introduce Slavery de facto, would entitle such

of our history, and learn wisdom from the acts ry, not only without the authority of law, but ture day, that hiring said slave to a person to of the great men who have gone to their account. I refer to a report in the House of Representatives, by John Randolph of Roan-slave? The local law, which exists in some freedom, under the second section of the sixth master control the will of the slave by force? Rachel rs. Walker (4 Missouri Rep., 350, Where no Slavery exists, the presumption, June term, 1836,) is a case involving, in every Rachel sued for her freedom; and it appeared

creditor? On the decease of the master, does the slave descend to his heirs as property? Can taken to Fort Snelling, where he was stationed, the master sell him? Any one or all of these and she was retained there as a slave a year, acts may be done to the slave, where he is legally and then Stockton removed to Prairie du Chie held to service. But where the law does not taking Rachel with him as a slave, where he confer this power, it cannot be exercised.

Lord Mansfield held that a slave brought into continued to hold her three years, and then he took her to the State of Missouri, and sold he England was free. Lord Stowell agreed with as a slave.

Lord Mansfield in this respect, and that the "Fort Snelling was admitted to be on the

slave could not be coerced in England; but on west side of the Mississippi river, and north of her voluntary return to Antigua, the place of the State of Missouri, in the territory of the United States. That Prairie do Chien was in the Michigan Territory, on the east side of the Mississippi river. Walker, the defendant, held The Court said, in this case:

The officer lived in Missouri Territory, at By virtue of what law is it, that a master the time he bought the slave; he sent to a the exercise of its discretion, to lay an embargo, a temporary privation of labor and of emigra-which suspends commerce; so, under the same tion." (1 vol. State Papers, Public Lands, from him the duties of a slave? The law of was his voluntary act, done without any other the Territory does not sanction it. No author- reason than that of his convenience; and he and The judicial mind of this country, State and ity can be claimed under the Constitution of the those claiming under him must be holden to Federal, has agreed on no subject, within its United States, or any law of Congress. Will it abide the consequences of introducing Slavery legitimate action, with equal unanimity, as on be said that the slave is taken as property, the both in Missouri Territory and Michigan, con the power of Congress to establish Territorial same as other property which the master may trary to law; and on that ground Rachel was declared to be entitled to freedom.

In answer to the argument that, as an officer of the army, the master had a right to take his

officer and soldier, he is required to take the Great interests have grown up under the Ter- other slave State. This right is supposed to be command of a fort in the non-slaveholding ritorial laws over a country more than five times greater in extent than the original thirteen virtue of the local law. Is it transferable? May States; and these interests, corporate or otherit be negotiated, as a promissory note or bill of his interests or convenience? It surely cannot wise, have been cherished and consolidated by exchange? If it be assigned to a man from a be law. If this be true, the court say, then it a benign policy, without any one supposing the law-making power had united with the Judiciary, under the universal sanction of the whole Is it personal or real property? Or is it and others who have the same character, the country, to usurp a jurisdiction which did not belong to them. Such a discovery at this late date is more extraordinary than anything cil? One thing is certain, that its origin has

but no State can be admitted into the Union its islands, where Slavery was introduced and an intention of residing in Illinois, taking his which has not been organized under some form maintained by the mother country. Although negroes with him. After a month's stay in sold, nor our wilderness reduced to cultivation, a century, its courts have declared that he facts, the inferior court instructed the jury that flourishing States, West and South, have been master. Lords Mansfield and Stowell agree the Supreme Court held was error, and the upon this point, and there is no dissenting au-thority. The case of Dred Scott vs. Emerson (15

which was not protected in England, brought be stated. This case involved the identical from one of its slave islands. Does not this question before us, Emerson having, since the

advancement and prosperity beyond the power of computation.

In the language of this court, it is a mere municipal regulation, founded upon and limited to the range of the territorial laws." This destate the grounds of the opinion of the court Two of the Judges ruled the case, the Chie Justice dissenting. It cannot be improper to cision is not a mere argument, but it is the end and of the dissent.

The court say: "Cases of this kind are no strangers in our court. Persons have been frequently here adjudged to be entitled to their freedom, on the ground that their masters held It is said the Territories are common propthat institution is prohibited. From the first case decided in our court, it might be inferred that this result was brought about by a presumed assent of the master, from the fact of exist. But subsequent cases base the right to Suppose a master of a slave in a British island term it, on the ground, it would seem, that it into effect the Constitution and laws of other

States and Territories, regardless of the rights

the policy, or the institutions, of the people Union, in their municipal concerns, are regarded as foreign to each other; that the courts of will become a floating waif on the billows will become a floating waif on the billows and of the State of Missouri, contained in the act admitting that State into the Union, was passed by a vote of 134, in the House of Representatives, to 42. Before Mr. Monroe signed the act, it was submitted by him to his Cabinet, and they held the restriction of Slavery in a Territory to be within the constitutional powers of Congress. It would be singular, if in 1804 which has not a direct bearing on the jurisdiction of the court, against which they decided, is allowed by the court, which has not a direct bearing on the jurisdiction of the court, against which they decided, is allowed by the court, which has not a direct bearing on the jurisdiction of the court, against which they decided, is laid down, that when there is no act of the slave States cannot be called to give effect to the law of the free State. Comity, it is true, this was said by the court, as also many other things, which are of no authority. Nothing that has been said by them, which has not a direct bearing on the jurisdiction of the court, against which they decided, is laid down, that when there is no act of the slave States cannot be called to give effect to the law of the free State. Comity, it is true, this was said by the court, as also many other things, which are of no authority. Nothing that has been said by them, which has not a direct bearing on the jurisdiction of the court, against which they decided, is laid down, that when there is no act of the slave States cannot be called to give effect to the law of the slave States cannot be called to give effect to the law of the slave States, depends upon the distance of the slave States cannot be called to give effect to the law of the free State. Comity, it is true, this was said by the court, as also many other things, which are of no authorized by law, can he be reclaimed?

In take courts with the constitution of the court have said that a slave may be taken by his master into a Territory of the co relation to Slavery, whose gratification is sought in the pursuit of measures whose inevitable consequence must be the overthrow and destruction of our Government. Under such measure which might gratify this spirit. She

> does she seek to share or divide it with others. Chief Justice Gamble dissented from the other two judges. He says : "In every slaveholding State in the Union, the subject of emancipation is regulated by statute; and the forms are prescribed in which quired by the laws of the State in which the slaves. This is a matter which, as I suppose, free. If the right of the person thus emancithe emancipation is complete, and the slave is termined by the law of the State in which the slave and his former master resided; and when Virginia, she coded it to the United States, and it appears that such law has been complied with, the right to freedom will be fully sustained in the courts of all the slaveholding States. although the act of emancipation may not be in the form required by law in which the

is willing to assume her full responsibility for

the existence of Slavery within her limits, nor

negroes as slaves which they held before that time, and that neither Congress nor the Con- "In all si tution should not be so interpreted and under- known to the court, it is just as much a matter was acquired; and when that law becomes stood as applying to such slaves, when it is of course to decide the rights of the parties ac therein declared that there shall be neither Slacording to its requirements, as it is to settle the very nor involuntary servitude in the Northwest title of real estate situated in our State by its cording to its requirements, as it is to settle th

Territory, nor in the State of Illinois, otherwise own laws."

Justice continues:

"The perfect equality of the different States lies at the foundation of the Union. As the courts. This has not been done; and on this ground the plea was defective, and the demuriser was properly sustained. No implication and a plea in abatement or in bar; it must bee complete in itself; the facts stated, if true, same the controller in itself; the facts stated, if true pleas. The facts stated, if admitted, are not inconsistent with other facts, which may be presumed, and which bring the planniff within the sext of Congress.

This has not been done; and on this grounds stated he considered the contracter of the best mode of disposing of it for the general benefit. While state this, but his did say, "whichever may be owned the government of Southern that the same that nothing c a be suffered to the contrary opinion of Lord of disposing of it for the general benefit. While state this, but his did say, "whichever may be owned the government of Southern that the contrary opinion of Lord is stated, if and the demurisers of the count of the United States, to the United States, the which of the grounds stated he considered the counter of the best mode of disposing of it for the general benefit. While state this, but his did say, "whichever may be owned the government of Southern that the contrary opinion of Lord is prohibited."

He referred to the contrary opinion of Lord in Hardwicke, in October, 174, as Chancellor: Madison, and the contracter of the bank of the plaintiff to state this but his defendant, which is was created, is erased from the sact that not a state of a state this but his defendant, which they sears before, the power is derived, the power is derived, the power is derived, the power is derived, the fert the source of the power is derived, the fert the source of the power is derived, the fert the sace of the count of the United States, to the United St

jurisdiction, being before the court, was de-

ided by them authoritatively, but nothing be-

yond that question.
Under this head I shall chiefly rely on the

decisions of the Supreme Courts of the South-

In the 1st and 2d sections of the 6th article

of the Constitution of Illinois, it is declared

that neither Slavery nor involuntary servitude

shall hereafter be introduced into this State,

otherwise than for the punishment of crimes

whereof the party shall have been duly con-victed; and in the 2d section it is declared

that any violation of this article shall effect

the emancipation of such person from his obli-

gation to service. In Illinois a right of transit through the State is given the master with his

belongs exclusively to the State.

The Supreme Court of Illinois, in the case

"After the conquest of this Territory by

tended, secured them in the possession of those

in other words, that the Ordinance and Consti-